

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5937 of 1995****For Approval and Signature:****HONOURABLE MR. JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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AMBALAL ZAVERCHAND SHAH - Petitioner(s)**Versus****THE PETLAD COMMERCIAL CO-OPERATIVE BANK LIMITED & 4 -
Respondent(s)**

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Appearance :

MS SONAL R SHAH for Petitioner(s) : 1,
MR SHIRISH JOSHI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR. JUSTICE R.S.GARG**Date : 27/12/2006****ORAL JUDGMENT**

1. Ms.Sonal R. Shah, learned counsel for the petitioner and
Mr.Shirish Joshi, learned counsel for the respondent No.1.
None for the respondents No.2 to 5 though served.

2. The petitioner, being aggrieved by the order dtd.3/1/1995 passed by the Member, Board of Nominees, below application dtd.14/9/1993 submitted by the plaintiff in Lavad Suit No.482 of 1985, directing inclusion of the name of the present petitioner in the title clause of the judgment and decree earlier delivered on 7/1/1987, is before this Court.
3. On earlier occasion, it was submitted that from the perusal of the application dtd.14/9/1993, it would clearly appear that the present petitioner – Ambalal Zaverchand Shah was not party defendant in the suit and he was held responsible simply by joining his name in the judgment. It was also submitted that the petitioner was never heard in the suit and under the circumstances, the order passed by the authority, fixing the liability on the head of the petitioner, deserves to be quashed.
4. On an earlier occasion, the respondent Bank submitted to the Court that the petitioner had already paid the amount and had discharged the liability, therefore, no cause of action survives. The Court, however, required the respondent Bank to file a specific affidavit that whether the present petitioner was a party defendant or not in the Lavad Suit No.482 of 1985.

5. The respondent Bank has filed additional affidavit along with certain documents to show that the present petitioner was a party defendant No.4 in the said suit, notice was served upon him on 28/2/1984, the present petitioner - Ambalal Zaverchand Shah made an application seeking permission to engage a lawyer, a Vakalatnama was filed and thereafter, the present petitioner - defendant No.4, had filed his written statement under his signature.
6. From these facts and the averments made by the respondent No.1, it would clearly appear that the present petitioner was a party defendant in the original suit. If due to some inadvertence, clerical or arithmetical mistake, the name of the defendant No.4 (present petitioner) was not shown in the judgment, then, the plaintiff certainly could make the application for inclusion of the name of the petitioner - defendant No.4 and on the facts, the Member, Board of Nominees was entitled to make necessary amendments / corrections in the title clause of the judgments.
7. In view of the aforesaid discussion and facts floating on the surface of the records, I must hold that the order passed by the Member, Board of Nominees was not bad.

8. The petition deserves to and is accordingly dismissed.
Interim relief, granted earlier, stands vacated. No costs.

(R.S. GARG, J.)

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